

PUBLIC CHAPTER NO. 1068

SENATE BILL NO. 2886

By Haynes, Raymond Finney, Ford

Substituted for: House Bill No. 2481

By McDonald, Maggart, Hardaway

AN ACT to amend Tennessee Code Annotated, Title 71, Chapter 3, Part 5, relative to drug testing policies for child care agency employees.

WHEREAS, the general assembly recognizes the importance of insuring that those individuals who are entrusted with caring for our children will not be inclined to influence children, either directly or by example, with the use of illegal drugs;

WHEREAS, the general assembly recognizes the magnitude of harm that could result from the use of illegal drugs by caregivers employed by child care agencies; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 71, Chapter 3, Part 5, is amended by adding the following language as a new, appropriately designated section:

Section 71-3-5__.

(a)(1) All persons or entities operating a child care agency as defined in this part, unless exempt as provided in § 71-3-503, shall establish a drug testing policy for employees, directors, licensees and operators of child care agencies and for other persons providing services under contract or for remuneration for the agency, who have direct contact, as defined by the department, with a child in the care of the agency.

(2) The policy shall specify how testing should be completed by the child care agency and provide for immediate and effective enforcement action involving such persons by such agency in the event of a positive drug test.

(3) The policy shall be provided by the child care agency to persons employed or engaged for contract or remunerative services prior to the effective date of this act and to all such persons upon initial employment or initial engagement in contract or remunerative services for the agency.

(4) The policy established pursuant to this section shall not supersede the requirements of § 71-3-502(d)(7)(C)(v) that all persons described therein satisfactorily complete a drug test prior to engaging in transportation services for children in a child care agency.

(b)(1) Such policy shall require drug testing based upon reasonable suspicion that employees, directors, licensees, or operators of a child care agency, or other persons providing services under contract or for remuneration for the agency are engaged in the use of illegal drugs.

(2) Such policy shall require persons employed or engaged for contract or remunerative services prior to the effective date of this act to have a drug test based upon reasonable suspicion that such persons are engaged in the use of illegal drugs.

(3) Events that may give rise to reasonable suspicion for purposes of requiring a drug test include, but are not limited to:

(A) Deterioration in job performance or changes in personal traits or characteristics;

(B) Appearance in a specific incident or observation which indicates that an individual is under the present influence of drugs;

(C) Changes in personal behavior not attributable to other factors;

(D) Involvement in or contribution to an accident where the use of drugs is reasonably suspected, regardless of whether the accident involves actual injury; or

(E) Alleged violation of or conviction of criminal drug law statutes involving the use of illegal drugs or prescription drugs.

(c) A child care agency shall, at no expense to the state, maintain for five (5) years and immediately make available to the department upon request a copy of drug testing results for an individual who is employed as a caregiver, director, licensee or operator at the child care agency, or for other persons providing services under contract or for remuneration for the agency, who have direct contact with children in the care of the agency.

(d) It shall be the responsibility of the individual who is to be tested to pay the appropriate fees necessary to obtain a drug test pursuant to the policy established by a child care agency. Drug testing results

obtained under this section are confidential and may be disclosed only for purposes of enforcing the provisions of this part.

(e) Notwithstanding subsection (a), a licensee or operator of a family child care home, as defined in this part, who has direct contact with children in the care of such home, shall submit to a drug test at the expense of the licensee or operator, when the department has reasonable suspicion to believe that such licensee or operator is engaged in the use of illegal drugs.

(f) A child care agency that does not comply with this section is subject to the department:

- (1) Denying the application for a license;
- (2) Denying the application for a license renewal; or
- (3) Suspending or revoking a license issued.

SECTION 2. The Department of Human Services is authorized to promulgate rules and regulations to effectuate the purposes of this section. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

SECTION 3. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2009, the public welfare requiring it.

PASSED: May 14, 2008



RON RAMSEY
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 28th day of May 2008



PHIL BREDESEN, GOVERNOR